

# COHEN & GREEN

October 20, 2020

The Honorable Richard J. Sullivan  
United States District Judge  
United States District Court for the Southern District of New York  
500 Pearl St. New York, N.Y. 10007

By Electronic Filing

**Re: Hayden v. City of New York, et al., 17-cv-1894 (RJS)**

Dear Judge Sullivan:

Our firm, with other counsel, represents Mr. Hayden in the matter named above. I write jointly with Elissa Fudim as counsel for all Defendants regarding how to approach Plaintiff's health at trial.

The parties have conferred in an attempt to agree upon a way to address Plaintiff Hayden's health and absence from the upcoming trial. We agree the Court should give some kind of direction to the jury at the trial's outset, but have been unable to agree upon language. The parties each propose the following language:

**Plaintiff's proposed instruction:**

You will notice that the Plaintiff, Joseph Hayden, is not here in court. He cannot attend this trial for serious health reasons that have made him non-verbal and non-mobile, and that are unrelated to this lawsuit. You should draw no inferences from his inability to attend. Appropriate portions of his deposition testimony will be read to you.

**Defendants' proposed instruction:**

Plaintiff, through no fault of his own, will not be attending this trial for reasons unrelated to this lawsuit. You should draw no conclusions from his absence. Appropriate portions of his deposition testimony will be read to you.

We are available at the Court's convenience, should Your Honor have any questions or concerns, and stand ready to address this issue in any alternative way the Court proposes.

Respectfully submitted,

/s/

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J. Remy Green

*Honorific/Pronouns: Mx., they/their/them*

**COHEN & GREEN P.L.L.C.**



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cc:  
All relevant parties by ECF.